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DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-817]

Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that ripe olives from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, Bryan Hansen or Peter Zukowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1757, (202) 482-3683 or (202) 482-0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2018, Commerce published the *Preliminary Determination* of this LTFV investigation in which Commerce found that ripe olives from Spain were sold at LTFV.¹ For a summary of the events that have occurred since Commerce published the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for this final

¹ See *Ripe Olives from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 3677 (January 26, 2018) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Determination*).

determination, *see* the Issues and Decision Memorandum.²

Scope of the Investigation

The product covered by this investigation is ripe olives from Spain. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,³ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope). No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice* during the scope comment period.⁴ In the context of supplemental questionnaire responses, two of the three mandatory respondents in the LTFV investigation reported sales of cocktail mixes but stated that they believe cocktail mixes are not within the scope of the investigation. In response, the petitioner⁵ commented that the respondents cannot unilaterally determine whether cocktail mixes are outside the scope. For the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*. We included all sales of cocktail mixes and their associated costs in our margin calculations, and solicited further information from parties concerning cocktail mixes for purposes of the final determination. In the April 3, 2018, post-preliminary analysis we issued with respect to the scope of the investigation, we found that: (i) ripe olives contained in cocktail mixes are in the scope, but that the remaining ingredients are not in the scope, and (ii) we clarified the scope by adding language concerning ripe olives contained

² See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Ripe Olives from Spain," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

³ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁴ See *Ripe Olives from Spain: Initiation of Less-Than-Fair-Value Investigation*, 82 FR 33054 (July 19, 2017) (*Initiation Notice*).

⁵ The Coalition for Fair Trade on Ripe Olives.

in cocktail mixes.⁶ As a result of our analysis of comments received in response to this post-preliminary analysis, we have modified the scope of this investigation for this final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Issues and Decision Memorandum.⁷

Verification

As provided in section 782(i) of the Act, in February and March 2018, we conducted verification of the information reported by the mandatory respondents Aceitunas Guadalquivir S.L. (AG), Agro Sevilla Aceitunas S.COOP Andalusia (Agro Sevilla),⁸ and Angel Camacho Alimentacion S.L. (Camacho) for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records and original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the

⁶ *See* Memorandum, "Ripe Olives from Spain: Post-Preliminary Scope Clarification Decision Memorandum," dated April 3, 2018.

⁷ *See* Issues and Decision Memorandum at Comment 1.

⁸ In the *Preliminary Determination* the company name was spelled incorrectly as Agro Sevilla Aceitunas S.COOP Anndalusia. The correct spelling of the company name is Agro Sevilla Aceitunas S.COOP Andalusia.

Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Changes Since the Preliminary Determination and Use of Partial Adverse Facts Available

Based on our analysis of the comments received and our findings at verification, we made certain changes to the margin calculations for AG, Agro Sevilla and Camacho.⁹ In addition, we revised the margin calculations for Camacho to reflect the application of partial facts available with an adverse inference pursuant to section 776(b) of the Act. For a discussion of these changes, *see* the Issues and Decision Memorandum. We have also revised the estimated weighted-average dumping margin for all-other producers or exporters (the all-others rate).

All-Others Rate

Section 735(c)(5)(A) of the Act provides that in the final determination Commerce shall determine an estimated weighted-average dumping margin for all exporters or producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters or producers individually examined, excluding any rates that are zero, *de minimis* or determined entirely under section 776 of the Act. In this investigation, we calculated estimated weighted-average dumping margins for the individually examined respondents that are not zero, *de minimis*, or based entirely on facts otherwise available. Because there are three estimated weighted-average dumping margins and doing so would not reveal business proprietary information, we calculated the all-others rate using a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's business proprietary data for the merchandise under consideration.¹⁰

⁹ *See* the "Discussion of the Issues" section of the Issues and Decision Memorandum and the company-specific analysis memoranda dated concurrently with, and hereby incorporated by, this notice.

¹⁰ For a complete analysis of the data, *see* Memorandum, "Less-Than-Fair-Value Investigation of Ripe Olives from

Final Determination

We determine that the following estimated weighted-average dumping margins exist:

Exporter or Producer	Estimated Weighted-Average Dumping Margin (percent)	Adjusted for Export Subsidies (percent) ¹¹
Aceitunas Guadalquivir S.L. ¹²	17.46	17.45 ¹³
Agro Sevilla Aceitunas S.COOP Andalusia ¹⁴	25.50	25.39 ¹⁵
Angel Camacho Alimentacion S.L.	16.88	16.83 ¹⁶
All-Others	20.04	19.98

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate

Spain: Calculation of the All-Others Rate in the Final Determination,” dated concurrently with this notice.

¹¹ The cash deposit rate is equal to the calculated estimated weighted-average dumping margin adjusted for the appropriate export subsidy offset(s). See final countervailing duty (CVD) determination, “Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination,” signed concurrently with this notice.

¹² In the companion CVD investigation, this company’s name is spelled as Aceitunas Guadalquivir S.L.U.

¹³ See Memorandum, “Final Determination Calculations for Aceitunas Guadalquivir, S.L.U.,” dated concurrently with this notice.

¹⁴ In the companion CVD investigation, this company’s name is spelled as Agro Sevilla Aceitunas S.Coop.And.

¹⁵ See Memorandum, “Final Determination Calculations for Agro Sevilla Aceitunas S.Coop.And.,” dated concurrently with this notice.

¹⁶ See Memorandum, “Final Determination Calculations for Angel Camacho Alimentacion S.L.,” dated concurrently with this notice.

entries of ripe olives from Spain as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after January 26, 2018, the date of publication of the *Preliminary Determination* of this investigation in the *Federal Register*.

Pursuant to section 735(c)(1)(B) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit as follows: (1) The cash deposit rate for the respondents listed above under Final Determination will be equal to their respondent-specific estimated weighted-average dumping margin; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; (3) for all other producers or exporters of ripe olives to the United States, the cash deposit rate will be equal to the all-others rate.

Further, Commerce will instruct CBP to require a cash deposit equal to the estimated amount by which the normal value (NV) exceeds the U.S. price as shown above, adjusted where appropriate for export subsidies found in the final determination of the companion CVD investigation. Consistent with Commerce's practice, where the product under investigation is also subject to a concurrent CVD investigation, Commerce instructs CBP to require a cash deposit equal to the estimated weighted-average dumping margin, less the amount of the CVD determined to constitute an export subsidy.¹⁷ Therefore, in the event that a CVD order is issued and suspension of liquidation is resumed in the companion CVD investigation on ripe olives from Spain,¹⁸ Commerce will instruct CBP to require cash deposits adjusted by the amount of

¹⁷ See, e.g., *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362, 61364 (October 13, 2015); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413, 17417 (March 26, 2012).

¹⁸ The provisional measures for the CVD investigation of ripe olives from Spain have currently expired (*i.e.*,

export subsidies, as appropriate. These adjustments are reflected in the final column of the rate chart, above. Until such suspension of liquidation is resumed in the companion CVD investigation, and so long as suspension of liquidation continues under this antidumping duty investigation, the cash deposit rates for this antidumping duty investigation will be the rates identified in the estimated weighted-average dumping margin column in the rate chart, above.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission (ITC) of its final determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2)(B) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of ripe olives from Spain no later than 45 days after Commerce's final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on appropriate imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

exceeded the maximum four-month period), and, therefore, no adjustment for countervailed export subsidies is warranted.

Notification to Interested Parties

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: June 11, 2018.

Gary Taverman,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are certain processed olives, usually referred to as “ripe olives.” The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multilayered airtight containers (including pouches), or otherwise; and all manners of preparation and preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in Spain.

Subject merchandise includes ripe olives that otherwise meet the definition above that are packaged together with non-subject products, where the smallest individual packaging unit (*e.g.*, can, pouch, jar, etc.) of any such product – regardless of whether the smallest unit of packaging is included in a larger packaging unit (*e.g.*, display case, etc.) – contains a majority (*i.e.*, more than 50 percent) of ripe olives by net drained weight. The scope does not include the non-subject components of such product.

Excluded from the scope are: (1) Specialty olives¹⁹ (including “Spanish-style,” “Sicilian-style,” and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally

¹⁹ Some of the major types of specialty olives and their curing methods are:

- “Spanish-style” green olives: Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.
- “Sicilian-style” green olives: Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for 4 to 9 months. These olives may be sold whole unpitted, pitted, or stuffed.
- “Kalamata” olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olive is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over 4 to 9 months in a salt brine.
- Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for 3 months or more.

prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to this investigation is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and US Customs purposes, they do not define the scope of the investigation; rather, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

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- III. Scope of the Investigation
- IV. Scope Comments
- V. Discussion of the Issues
 - Comment 1: Clarify Scope to Include Ripe Olives Contained in Cocktail Mixes
 - Comment 2: Particular Market Situation Allegation
 - Comment 3: Whether Commerce Should Apply its Differential Pricing Methodology
 - Comment 4: Agro Sevilla's and Camacho's Constructed Export Price Indirect Selling Expenses
 - Comment 5: Camacho Corrections Presented at Verification
 - Comment 6: Camacho Ministerial Error Regarding Mixed Currencies
 - Comment 7: Camacho Cost Verification Findings
 - Comment 8: Camacho Purchases of Olives from Affiliated Parties
 - Comment 9: Camacho's Plantilla Price Adjustments
 - Comment 10: Camacho's CEP Offset
 - Comment 11: Camacho's Home Market Credit Expense
 - Comment 12: Camacho's Revised Control Number
 - Comment 13: Camacho's U.S. Sales of Merchandise Manufactured by an Unaffiliated Party
 - Comment 14: Camacho's Margin Should Be Based on Adverse Facts Available
 - Comment 15: AG Minor Corrections Presented During Sales and Cost Verifications
 - Comment 16: AG Home Market Commission Expenses
 - Comment 17: AG Freight Credit
 - Comment 18: AG Whether Local Taxes should be included in the General and Administrative (G&A) Expenses
 - Comment 19: AG Unexplained Cost Reconciliation Difference
 - Comment 20: Whether Commerce Should Adjust AG's Reported Cost of Raw Materials to Reflect Consumption Costs versus POI Purchases
 - Comment 21: Classification of Machinery Depreciation Expense
 - Comment 22: Agro Sevilla Corrections Presented During Sales Verifications
 - Comment 23: Agro Sevilla's Pick-Up Adjustment Expense
 - Comment 24: Agro Sevilla's Unreported Pallet Revenues
 - Comment 25: Agro Sevilla's Total Cost of Manufacturing
 - Comment 26: Agro Sevilla's Financial Expenses
 - Comment 27: Agro Sevilla's Affiliated Purchases
- VI. Recommendation

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